

ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 16 2003

Federal Communications Commission
Office of Secretary

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In re Applications of)
)
GENERAL MOTORS CORPORATION and)
HUGHES ELECTRONICS CORPORATION,) MB DOCKET NO. 03-124
Transferors)
)
and)
)
THE NEWS CORPORATION LIMITED,)
Transferee)
)
For Authority to Transfer Control)

TO: Chief, Media Bureau
Chief, Transaction Team

PETITION TO DENY

Dennis J. Kelly

LAW OFFICE OF DENNIS J. KELLY

Post Office Box 41177
Washington, DC 20018
Telephone: 202-293-2300
E-mail: dkellyfcclaw1@comcast.net

Counsel for:

June 16, 2003

NATIONAL HISPANIC MEDIA COALITION

No. of Copies rec'd
Lit/ABODE

14

SUMMARY

47 U.S.C. §309(e) requires a hearing when there are substantial and material questions of fact as to whether the public interest, convenience and necessity would be served by the granting of this application.

There is a substantial and material question of fact and law as to whether the sale of "DirecTV" by General Motors Corporation and Hughes Electronics Corporation to News Corporation Limited, better known to Americans as "the Fox Network" and "The Rupert Murdoch Organization", is in the public interest, convenience and necessity, because as of noon on Monday, June 16, 2003, the deadline day for petitions and comments in this proceeding, the Commission has not released the new multiple ownership and cross-interest rules that it adopted by a split 3-2 vote on June 2, 2003. Without these new rules, the public has no idea what the relevant factual showings and/or legal standards are. It would be outrageous--and certainly a violation of the Administrative Procedure Act--were the "DirecTV" case be decided during this period of legal limbo.

TABLE OF CONTENTS

I.	Preliminary Statement	2
II.	The "Freeze" Should Apply to This Application . .	3
III.	The Public Interest Is Not Served by This Transaction	7
IV.	Remedy Sought	11
V.	Conclusion	13

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In re Applications of)	
)	
GENERAL MOTORS CORPORATION and)	
HUGHES ELECTRONICS CORPORATION,)	MB DOCKET NO. 03-124
Transferors)	
)	
and)	
)	
THE NEWS CORPORATION LIMITED,)	
Transferee)	
)	
For Authority to Transfer Control)	
Of "DirectTV")	
TO: Chief, Media Bureau		
Chief, Transaction Team		

PETITION TO DENY

National Hispanic Media Coalition (NHMC), by its attorney, and pursuant to Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §309(d), hereby respectfully submits its "Petition to Deny" against all of the applications in the above-entitled docket relative to the transfer of control of DirecTV, and respectfully request that the Commission dismiss, deny or designate for hearing all said applications. In support whereof, the following is shown:

I. Preliminary Statement

1. By public notice, DA 03-1725, released May 16, 2003, the Commission gave public notice of the filing of the applications in the above-entitled docket, and allowed interested parties until and including June 16, 2003 to file comments or petitions to deny. As this pleading is being filed on June 16, 2003, it is timely filed.

2. NHMC has standing to contest the above-captioned application. The "DirecTV" service currently owned and operated by transferors General Motors Corporation and Hughes Electronics Corporation (collectively "GMH") is a nationwide direct broadcast satellite (DBS) video provider, and by the admissions made in the above-captioned application DirecTV has millions of subscribers across all 50 states.

3. NHMC is a non-profit, nationwide coalition of Hispanic-American organizations that have joined together to address mass media-related issues of interest to the Hispanic-American population of the United States. Its goals are to (1) improve the image of Hispanic Americans as portrayed on national media, (2) end the practice of the depicting of Hispanics in the national media through negative and offensive stereotypes, (3) increase the numbers of Hispanic Americans employed in all facets of the

broadcasting and mass media industries, and (4) ensure that the national media audience research surveys and services accurately document programming preferences among Hispanic American audiences.

4. As a responsible spokesman for Hispanic American media issues that is well known to the FCC, the NHMC has standing to challenge the above-captioned application for the transfer of "DirecTV" from GMH to News Corporation Limited (variously referred to herein as "Fox" and "the Rupert Murdoch Organization"). ***Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application***, 82 FCC 2d 89 (1980); ***Office of Communication of United Church of Christ v. FCC***, 359 F.2d 994 (D. C. Cir. 1966).

5. A declaration of Alex Nogales, President of NHMC, is appended hereto as an Exhibit.

II. The "Freeze" Should Apply to This Application

6. In a ***Report and Order in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244*** (adopted June 2, 2003), by a 3-2 vote the Commission amended its multiple ownership rules and the rules governing cross-ownership of television stations and multichannel video program distributors (MVPDs). As of this writing, however, the Commission has not yet released the text of such rules. As

the FCC makes clear on every one of its press releases that are unaccompanied by a text of the relevant decision, "This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F 2d 385 (D.C. Circ. 1974)".

7. Therefore, the FCC has not informed the public of its little secret as to exactly what the new multiple ownership rules are. The FCC apparently believes that its existing rules are no longer in effect, because it has imposed a "freeze" on the processing of existing broadcast "long-form" assignment and transfer applications and has prevented the electronic filing of new FCC Form 314 or 315 applications. **See Media Bureau Announces Processing Guidelines For Broadcast Station Applications**, FCC 03-1877, released June 2, 2003. In that "Public Notice", the FCC has indicated that this "freeze" is to continue for pending assignment and transfer applications an indefinite period of time, until the Office of Management and Budget has approved new FCC "information collection" requirements and that notice of such approval has been published in the Federal Register.

8. If the "freeze" applies to broadcast applications, then it must also apply to the above-captioned application, because it directly implicates the

new rules as they govern cross-ownership of television stations and an MVPD. As noted in the pending application narrative statement, Fox (through its Fox Television Stations, Inc. subsidiary) is licensee of some 35 over-the-air broadcast television stations nationwide¹. The public cannot fairly comment on the application of the new rules it has not seen to the facts contained in the GMH/Fox application. NHMC's rights to fair notice and comment under the Administrative Procedure Act, 5 U.S.C. §551 *et seq.* are being abridged by the Commission's procedures in this case. The "freeze" must be applied against the GMH/Fox application, and a new public notice must be issued, allowing interested parties at least 30 days after the new multiple ownership rules are released to be able to effectively comment on the above-captioned application.

9. As to the "freeze", NHMC cannot help but comment that, while the GMH/Fox application processing goes on merrily down the road, a Hispanic broadcaster has been caught up in the "freeze". Bustos Media Holdings of Oregon, LLC, owned by nationally respected Hispanic American broadcasters Amador and Rosalie Bustos, has contracted to purchase two AM broadcast stations with overlapping contours from separate sellers in the Portland,

¹Letter of William M. Wiltshire to Marlene H. Dortch, Secretary, FCC, dated May 30, 2003.

Oregon market, KMUZ(AM), Gresham, Oregon, and KKGT(AM), Portland, Oregon. The KMUZ application, File No. BAL-20030418ABS, was granted on May 30, 2003; however, the KKGT application, BAL-20030423ABR, which is eligible for a grant as the petition to deny date (June 2, 2003) passed without a petition being filed, was ensnared in the freeze. There is no question under either the old or new rules that a party may own 2 AM stations with overlapping contours in the same market. However, the "freeze" unfairly, arbitrarily and capriciously failed to separate out the grantable applications such as the KKGT applications from the more contentious applications. That the "freeze" would injure a Hispanic broadcaster is especially ironic, as the FCC's June 2 press release announcing details of the multiple ownership rules claimed that the new rules were going to help minority and female broadcasters enter the broadcasting industry.

10. We bring this sad tale to the attention of the Commission because it would bring to the fore questions of unequal treatment that Caucasian-dominated outfits like GMH and Fox would get one level of special treatment on the one hand, and a Hispanic-controlled company like Bustos Media would be given the back of the Commission's hand on the other.

11. Therefore, so long as an unconditional freeze exists on the processing of broadcast applications because of the new multiple ownership rules, it would be arbitrary, capricious and irrational not to "freeze" processing on the GMH/Fox application until the public has had a chance to see, read and digest the **official** new FCC multiple ownership rules, and then have a fair, new 30 day period after that date in which to file informed and effective comments.

III. The Public Interest Is Not Served By This Transaction

12. By this transaction, Fox and the Rupert Murdoch organization seek to dominate the world of "DBS" broadcasting, as, on information and belief, the Rupert Murdoch organization controls the British Sky Broadcasting DBS combine in the United Kingdom and Europe, and DBS operations known as "Sky" or "Fox" in Latin America and Australasia.

13. In the United States, the Fox organization is monolithic in the entertainment industry, on information and belief, through its ownership of a motion picture studio, programming syndication arms ("Twentieth Television" and "STF"), owned-and-operated television stations, an over the air television network ("Fox Broadcasting Company"), and a large number of networks

carried on MVPDs. According to an informational webpage on a Fox website, <http://www.newscorp.com/management/foxtvstations.html>, the following are the owned-and-operated Fox television stations:

Current Owned & Operated Stations		Market Rank
New York	WNYW-5 WWOR-TV-9	1
Los Angeles	KTTV-11 KCOP-13	2
Chicago	WFLD-32 WPWR-TV-50	3
Philadelphia	WTXF-TV-29	4
Boston	WFXT-25	6
Dallas	KDFW-4 KDFI-27	7
Washington, DC	WTTG-5 WDCA-20	8
Atlanta	WAGA-5	9
Detroit	WJBK-2	10
Houston	KRIV-26 KTXH-20	11
Tampa	WTVT-13	13
Minneapolis	KSMP-TV-9 WFTC-29	14
Cleveland	WJW-8	15
Phoenix	KSAZ-TV-10 KUTP-45	16

Denver	KDVR-31	18
Orlando	WOFL-35 WRBW-65	20
St. Louis	KTVI-2	22
Baltimore	WUTB-24	24
Milwaukee	WITI-6	31
Kansas City	WDAF-TV-4	33
Salt Lake City	KSTU-13	36
Birmingham	WBRC-6	40
Memphis	WHBQ-TV-13	43
Greensboro	WGHP-8	46
Austin	KTBC-7 KVC-13	54
Gainesville	WOGX-51	162

Total Combined U.S. Coverage is 44.704%
(coverage is 38.063% under FCC regulations)

14. According to its application, at Attachment F, Fox has the following interests in television networks made available to MVPDs (100% interest, unless noted):

National Proaramminp Networks

Fox News Channel

FX

National Geographic Channel (66 2/3%; remaining 33 1/3% National Geographic Society)"

Speed Channel

Fox Movie Channel

Fox Sports World

Fox Sports en Espanol(37.8%; remaining 62% Liberty Media (10.6%) and Hicks Muse (51.6%))
Fox Sports Digital Networks
TV Guide Channel (42.9% indirectly owned through Gemstar, which owns 100%)
TV Games Network (42.9% indirectly owned through Gemstar, which owns 100%)

Regional Sports Programming Networks

Fox Sports Net Arizona
Fox Sports Net Bay Area (40%; remaining 60% Rainbow)
Fox Sports Net Chicago (40%; remaining 60% Rainbow)
Fox Sports Net Detroit
Fox Sports Net Florida (40%; remaining 60% Rainbow)
Fox Sports Net Midwest
Fox Sports Net New England (20%; remaining 80%: 50% Comcast, 30% Rainbow)
Fox Sports Net New York (40%; remaining 60% Rainbow)
Fox Sports Net North
Fox Sports Net Northwest
Fox Sports Net Ohio (40%; remaining 60% Rainbow)
Fox Sports Net Pittsburgh
Fox Sports Net Rocky Mountain
Fox Sports Net South (88%; remaining 12% Scripps-Howard)
Fox Sport Net Southwest
Fox Sports West
Fox Sports West 2
Madison Square Garden Network (40%; remaining 60% Rainbow)
Sunshine Network (93.7%; remaining 6.3% Adelphia and Cox)

Regional Programming Networks

MSG Metro Guide (40%; remaining 60% Rainbow)
MSG Metro Learning (40%; remaining 60% Rainbow)
MSG Traffic and Weather (40%; remaining 60% Rainbow)

15. Fox seeks what appears to us to be the most amount of media concentration ever proposed to be held by a single party. Without more, this does not serve the public interest. The FCC pursuant to Section 309(e) of the Communications Act of 1934, as amended, is required to hold

a public hearing on an application when it cannot make a finding that the granting of an application would serve the public interest, convenience and necessity. Particularly since the public is proceeding in the dark on this case—we simply do not know at this writing what the applicable standard is or will be for the granting of this application, absent the publication of the FCC's new multiple ownership rules, it seems to us that the fair thing to do is to designate the above-captioned proceeding for a hearing to determine the public interest benefits, if any, to be derived from the sale of "DirecTV" to Fox and the Rupert Murdoch organization, to let organizations such as NHMC have full and fair discovery, and let the chips fall where they may.

IV. Remedy Sought

16. NHMC seeks that the Commission designate the above-captioned applications for appropriate hearing issues. It is respectfully submitted that there is a substantial and material question of fact as to whether Fox and the Rupert Murdoch organization comply with the new multiple ownership rules, as those rules have not yet been officially published. Because of that, it is impossible as of the current day for the FCC to make the statutory finding that a grant of the above-captioned application

would serve the public interest, convenience or necessity. Commission to find. **Weyburn Broadcasting Limited Partnership v. FCC**, 984 F.2d 1220 (D. C. Cir. 1993); **David Ortiz Broadcasting Corp. v. FCC**, 941 F.2d 1253 (D. C. Cir. 1991); **Astroline Communications Co. v. FCC**, 857 F.2d 1556 (D. C. Cir. 1989); **Beaumont Branch of the NAACP v. FCC**, 854 F.2d 501 (D. C. Cir. 1988); and **Citizens for Jazz on WRVR, Inc. v. FCC**, 775 F.2d 392, 59 RR 2d 249 (D. C. Cir. 1985).

17. **Citizens for Jazz** states the test: a petitioner need not demonstrate a fire to prove a fire, but need only demonstrate "a good deal of smoke" in order to obligate the Commission to hold a hearing on whether the fire exists. 775 F.2d at 397. **Citizens for Jazz** is good law in this Circuit, having been quoted with approval in **Serafyn v. FCC**, 149 F.3d 1213, 1216 (D. C. Cir. 1998). There is a "good deal of smoke" in this case, as there is a very real smoke screen through which the instant application is being secreted--the public does not know the rules under which the instant application is to be judged.

18. Therefore, NHMC urges that the Commission designate the above-captioned applications on appropriate issues, including but not limited to the following:

(1) Whether the public interest, convenience and necessity would be served by a grant of the above-captioned applications.

19. NHMC respectfully seeks to be named and recognized as an intervenor or a party to such a hearing, and to be given the right to conduct discovery and to question witnesses and adduce evidence at the hearing.

V. Conclusion

WHEREFORE, the National Hispanic Media Coalition urges that the above-captioned application BE DENIED, DISMISSED OR DESIGNATED FOR HEARING upon the issue framed above and/or other appropriate hearing issues.

Respectfully submitted,

**NATIONAL HISPANIC MEDIA
COALITION**

By

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

Dennis J. Kelly
(D. C. Bar #292631)
Its Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
Telephone: 202-293-2300
E-mail: dkellyfcclaw1@comcast.net

DATED: June 16, 2003

DECLARATION

Alex Nogales, pursuant to Section 1.12 of the FCC's Rules, hereby declares as follows:

1. I am President of the National Hispanic Media Coalition.
2. I have reviewed the foregoing "Petition to Deny" and I am familiar with its contents.
3. I have personal knowledge of the factual matters asserted therein. All facts and circumstances stated in said "Petition to Deny" are true and correct to the best of my knowledge.
4. All statements contained in this Declaration are true and correct and are made under penalty of perjury.

DATED this 16th day of June, 2003.



Alex Nogales

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Petition to Deny" were served by either first-class United States mail, postage prepaid, or by e-mail, as indicated below, on this 16th day of June, 2003, upon the following:

Richard E. Wiley, Esquire*
Lawrence W. Secrest, III, Esquire
Todd M. Stansbury, Esquire
WILEY REIN & FIELDING
1776 K Street, N. W.
Washington, DC 20006
Co-counsel for General Motors Corporation and
Hughes Electronics Corporation

Gary M. Epstein, Esquire*
James H. Barker, Esquire
John P. Janka, Esquire
LATHAM & WATKINS, LLP
555 11th Street, N. W.
Suite 1000
Washington, DC 20004
Co-counsel for General Motors Corporation and
Hughes Electronics Corporation

William M. Wiltshire, Esquire*
Scott Blake Harris, Esquire
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N. W.
Washington, DC 20036
Counsel for The News Corporation Limited

Linda Senecal, Esquire+°
Industry Analysis Division
Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C438
Washington, DC 20554

Qualex International+
Portals II, 445 12th Street, SW, Room CY-B402
Washington, DC 20554

Marcia Glauberman, Esquire+
Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C264
Washington, DC 20554

Barbara Esbin, Esquire+
Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C458
Washington, DC 20554

Mr. Douglas Webbink+
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-C730
Washington, DC 20554

Ms. JoAnn Lucanik+
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A660
Washington, DC 20554

Mr. Simon Wilkie+
Office of Plans and Policy
Federal Communications Commission
445 12th Street, SW, Room 7-C452
Washington, DC 20554

James Bird, Esquire+
Office of General Counsel
Federal Communications Commission
445 12th Street, SW, Room 8-C824
Washington, DC 20554

Neil Dellar, Esquire+
Office of General Counsel
Federal Communications Commission
445 12th Street, SW, Room 8-C818
Washington, DC 20554

Tracy Waldon, Esquire+
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A144
Washington, DC 20554


Dennis J. Kelly

*By U. S. Postal Service
+By e-mail
°With six paper copies